IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.509 and 510 of 2003

CRP.NPD.No.509/2003

N.Thangavel .. Petitioner (tenant)

vs.

N.Chellam .. Respondent (Landlord)

CRP.NPD.No.510/2003

N.Kandaswami .. Petitioner(tenant)

vs.

N.Chellam .. respondent(landlord)

Revision Petitions filed against the order dated 26.12.2002 passed in R.C.A.Nos.12 and 13 of 2001 on the file of the learned appellate authority/sub-Judge, Ootacamund, confirming the orders dated 17.4.2001 and 12.4.2001 passed in RCOP Nos.14 and 42 of 1995 on the file of the rent controller, Kothagiri, respectively.

For Petitioners : Mr.S.Kingston Jerold, for
Mr.S.K.Rakhunathan.

For Respondent : Mr.T.Girish, for
Mr.Srinath Sridevan.

COMMON ORDER

These Revision Petitions have been filed against the order dated 26.12.2002 passed in R.C.A.Nos.12 and 13 of 2001 on the file of the learned appellate authority/sub-Judge, Ootacamund, confirming the orders dated 17.4.2001 and 12.4.2001 passed in RCOP Nos.14 and 42 of 1995 on the file of the rent controller, Kothagiri, respectively.

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2.The brief facts are as under:

The tenants are the revision petitioners. The revision petitioners and the respondent landlady are the brothers and sister. The landlady/sister filed two suits in O.S.Nos.200/1986 and 201/1986 against the revision petitioner in C.R.P.NPD.No.509/2003 and the revision petitioner in CRP.NPD.No.510/2003 for evicting them from the suit schedule property on the ground that they were permitted by her to occupy the properties and she now requests the property for her own occupation. Both the brothers resisted the suits on the ground that they are not permissive occupants but are tenants under their sister. The trial court dismissed the suits by holding that the revision petitioner in CRP.NPD.No.509/2003 is a tenant on a monthly rent of Rs.110/- and the revision petitioner in CRP.NPD.No.510/2003 is a tenant on a monthly rent of Rs.75/-. Thereafter the landlord-sister filed two RCOPs., in RCOP No.14/1995 and 42/1995 on the ground that both the brothers are guilty of wilful default and she required both the premises which are separated only by a door for her own occupation for running a mess. The rent controller allowed RCOP No.14/1995 and RCOP No.42/1995 on both the grounds and the appeals preferred by the brothers in RCA Nos.12/2001 and 13/2001 were dismissed by the appellate authorities. Aggrieved by the concurrent findings of both the authorities below, the brothers have filed the above two revision petitions.

3.Heard the learned counsel for the petitioners and the learned counsel for the respondent. I have also perused the documents filed in support of their submissions.

4.The rent controller in his order dated 17.4.2001 in RCOP No.14/1995 and order dated 12.4.2001 in RCOP No.42/1995 found that after the landlord refused to receive the rents sent by Money Order, the brothers did not take steps to deposit the rent before the court after following the procedure contemplated under Sec.8 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The rent controller disapproved the conduct of the brothers in occupying the premises for nine years without taking steps to deposit the rent and therefore the rent controller found that they are liable to be evicted on the ground of wilful default. Insofar as the requirement of the landlady of both the premises situated in the same building divided by the door, the rent controller found that her requirement is bona fide and allowed the petitions on that ground also. The appellate authority concurred with the findings of the rent controller in entirety after re-evaluating the evidence and these concurrent findings

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are being assailed before me.

5.It is settled law that this court under its revisional jurisdiction conferred on it under Sec.25 of the Act will not interfere with the concurrent findings of the authorities below unless the findings are unreasonable, illegal and perverse. The revision under Sec.25 is even though much wider than the revision conferred on this court under Sec.115 of CPC, the same is not an appeal enabling this court to re-appreciate and re-evaluate the evidence to come to a different conclusion unless the orders of the authorities below are so erroneous, unreasonable and perverse.

6.In the present case, the rent controller in both the eviction petitions found that the brothers/tenants who are occupying the properties for nine years without taking steps to deposit the rent when the rents sent by them by Money Order were returned by their sister. Sec.8 of the Act has been enacted for the purpose of enabling a tenant to deposit the rent before the controller when the landlady refused to accept the rent or evades the issue of a receipt for any payment of rent. For better appreciation Sec.8 is extracted below:

> "8.Landlord liable to give receipt for rent or advance:-(1)Every landlord who receives any payment towards rent or advance shall issue a receipt duly signed by him for the actual amount of rent or advance received by him.
>
> (2)Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the landlord:
>
> Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within (five kilometres) of the limits thereof.
>
> Explanation:- It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

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(3)If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4)If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.

(5)If the landlord refuses to receive the rent remitted by Money Order under sub-section(4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building."

7.Now it has been repeatedly held by this court and the Supreme Court that Sec.8 is mandatory and the sub-clauses are to be followed strictly before depositing the rent before the controller. Therefore the rent controller has correctly held that both the brothers are liable to be evicted on the ground of wilful default as no steps have been taken by them to deposit the rent under Sec.8(5) of the Act.

8.The appellate authority in both the appeals has not only agreed with the findings of the rent controller in this aspect but further held that Exs.B1 to B5 which are the Money Order coupons returned by the landlady do not disclose that the rents have been sent for all the 12 months as there are only one coupon in Ex.B1 and 5 coupons in Ex.B2, 5 coupons in E.B3, 6 coupons in Ex.B4 and 6 coupons in Ex.B5. The appellate authority has observed that not even in one Exhibit there are 12 coupons evidencing regular monthly rental payments. In such circumstances, both the authorities have correctly come to the conclusion that the brothers/tenants are guilty of wilful default in the payment of monthly rent. No tenant can occupy the tenanted premises without paying the rent or without depositing the rent before the rent controller if the same is refused. Therefore I have no hesitation in upholding the order of both the authorities below that both the tenants/brothers are liable to be evicted on the ground of wilful default in the payment of monthly rent committed by them.

9.Similarly both the authorities below have found that it does not require much steps for the landlord for starting a mess in the tenanted premises. The only thing that is required is getting permission from the local authority and the landlady deposed before the controller that she has

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applied for licence to run a mess and the local authority informed her that unless the tenants are vacated, the licence could not be issued to her. Both the authorities below found that the claim of the landlady is bona fide and the brothers/tenants were not able to let in any evidence to disprove the same excepting to state that the place is inadequate for running the mess, she is a house-wife, her husband is employed in a bank, she has no previous experience and she is an uneducated lady. These are all irrelevant consideration for deciding the bonafide of the landlady and therefore they have been rightly rejected by the authorities below.

10.In the result, I do not find any merits in both the Civil Revision Petitions and the same are dismissed. No costs.
sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Subordinate Judge
(Appellate Authority)

2. The Rent Controller, Kottagiri

3. The Record Keeper, VR Section,
High Court, Madras

+2ccs to Mr. S.K. Rakhunathan, Advocate sr no. 31973 and 31974
+ one cc to Mr. Srinath Sridevan, Advocate sr no. 33250

smv(co)
nm(26.6.2007)

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